BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

AMY MARICK	)	
Claimant	)	
V.	)	
	)	Docket No. 1,064,923
U.S.D. 233	)	
Self-Insured Respondent	)	

ORDER

Claimant requested review of the July 7, 2015, Award by Administrative Law Judge (ALJ) Kenneth J. Hursh. The Board heard oral argument on January 21, 2016.

APPEARANCES

James R. Shetlar, of Overland Park, Kansas, appeared for the claimant. Kip A. Kubin, of Leawood, Kansas appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. Claimant appealed her entitlement to future medical benefits, but acknowledged at oral argument to the Board, the Award allowed application for same.

ISSUES

The ALJ found claimant had a 2.5 percent permanent partial impairment to the left lower leg. Claimant appeals, arguing the ALJ should have relied on Dr. Zimmerman's opinion and impairment rating when awarding compensation.

Claimant contends she is entitled to a 50 percent permanent partial impairment to the left lower extremity. Claimant disputes the ALJ's use of the AMA *Guides* to the Evaluation of Permanent Impairment, Fourth Edition, contending the analysis by the ALJ was flawed.

Respondent contends the Award should be affirmed.

The issues on appeal are:

1. What is the nature and extent of claimant's disability?

2. Did the ALJ improperly apply the AMA *Guides* in determining claimant's functional impairment?

FINDINGS OF FACT

Claimant has been a teacher for 14 years and currently works for Olathe School District, Brentwood Elementary. On August 18, 2010, claimant injured the peroneal nerve in her left ankle after one of her students caught her off balance while trying to hug her. Claimant testified the student leapt into her for the hug and she took on the student's weight, which caused injury to her left ankle. The next day, claimant sought treatment at the occupational clinic where it was determined her symptoms were not from the work incident and she was released. Claimant then sought treatment with her then primary care physician, Dr. Greenwood, to whom claimant reported her ankle being weak. X-rays and an MRI were ordered and claimant was referred to Dr. Patel at Rockhill Orthopedics.

Claimant was provided with a series of injections in her low back and left ankle. It was claimant's understanding the low back injections were to block the nerve going to her ankle. Claimant was also sent for physical therapy. Since the accident, claimant has to limit her activity because, after so long, she has get off her feet. Claimant continued to work while she received treatment.

On July 5, 2013, claimant was in an auto accident in which she suffered a torn meniscus in her right knee, resulting in surgery on her right knee. Claimant denies any additional injury to her left leg from the auto accident. Claimant testified that the auto accident strengthened her injured left leg because she had to use it for all of her weightbearing. However, she continued to experience weakness in her left leg from the 2010 accident. Claimant has concerns about possible future medical treatment. She feels that, in the future, she may need additional lumbar sympathetic blocks and anti-inflammatory and pain medication.

Claimant testified that before the accident she was active and could jog, run, rollerblade, bike and ski, among other activities. Now she is off her feet as much as possible in order to get through the day. By the end of the day, it is difficult for her to walk.

Claimant met with board certified orthopedic surgeon Aakash A. Shah, M.D., on June 9, 2011, reporting continued significant pain and shooting paresthesias about the left ankle anteriorly, from the injury sustained on August 18, 2010. Dr. Shah noted claimant had been evaluated by Dr. Patel and referred for a left lumbar sympathetic block on February 3, 2011. Claimant was then referred to Dr. Shah for the August 2010 injury.

Dr. Shah noted claimant had significant improvement of her tingling from the left lumbar sympathetic block on February 3, 2011, as recommended by Dr. Patel. Claimant's symptoms then returned and she was sent for more physical therapy. Claimant primary complaints to Dr. Shah were tingling and paresthesia type pain, pins and needles about the anterior and anterolateral and anteromedial aspect of the left ankle. Claimant reported having trouble sleeping and of tingling in the left foot. Dr. Shah diagnosed left ankle reflex sympathetic dystrophy. He found that because claimant had improvement from a sympathetic block, it was diagnostic and therapeutic for claimant's condition, and he recommended another one. Dr. Shah gave claimant a prescription for physical therapy to focus primarily on desensitization modalities and skin massage. Claimant was also given a prescription for Voltaren and Ultram.

Claimant met with Dr. Shah for follow-up on July 12, 2011. She reported improvement of her symptoms from the prescribed treatment, but the Voltaren disagreed with her stomach. Dr. Shah continued with the diagnosis of left ankle reflex sympathetic dystrophy (RSD) and, because claimant was improving, recommended continuing therapy. Claimant was given a refill for Ultram and transitioned from Voltaren to Celebrex.

On August 18, 2011, claimant reported worse pain since her last visit. She complained of lack of adequate strength and of fatigue in the left lower extremity. She also reported being unable to ambulate throughout much of the day because of pain anterolaterally. She reported some benefit from physical therapy. Dr. Shah continued with the diagnosis of left ankle RSD and claimant was given a refill of medication and another prescription for physical therapy. Claimant was instructed to continue on modified work duty due to claimant's complaint of being unable to ambulate continuously throughout the day because of significant pain. Dr. Shah also recommended a functional capacity evaluation (FCE) to better evaluate claimant's capabilities.

On September 29, 2011, claimant met with Dr. Shah for follow-up of her left ankle RSD. Claimant reported improvement since her last visit. She had been going to physical therapy and was able to ride a stationary bike, but not an elliptical machine. Claimant's diagnosis remained the same. Additional physical therapy was ordered along with an FCE, if one had not yet been completed.

On November 22, 2011, claimant met with Dr. Shah, who noted claimant's FCE showed a valid effort. Claimant continued to have symptoms daily, but showed improvement. Dr. Shah ordered further physical therapy and modified her work restrictions. Dr. Shah opined that if claimant did not show improvement at her next visit, he would recommend a referral to a pain physician for consideration of repeat sympathetic block injections.

On January 5, 2012, claimant continued to have pain in her left ankle. She reported the return of a burning, pins and needles sensation anteriorly, anteromedially and anterolaterally. Dr. Shah found claimant's strength to be equal and fully intact. There was

no swelling or heat in the ankle. Dr. Shah recommended claimant see a pain management specialist and a referral back to Dr. Eubanks for consideration of another sympathetic block. Dr. Shah deferred to the pain management specialist for the continued treatment of claimant's left ankle RSD.

Dr. Shah indicated he would not recommend surgery for claimant because there is no procedure he is aware of that would relieve claimant of her RSD. He admitted he did not specialize in treating RSD, noting those that do are usually pain management physicians.

On July 25, 2013, Dr. Shah opined claimant had no specific future work restrictions or limitations referencing the on-the-job injury. He did not believe any further medical treatment was required. Utilizing the 4th edition of the AMA *Guides*, Table 68 on page 89, Dr. Shah assigned claimant a 2.5 percent permanent partial lower extremity impairment.

At respondent's request, claimant met with board certified physical medicine and rehabilitation specialist James S. Zarr, M.D., on February 22, 2012, regarding her left ankle pain. Dr. Zarr diagnosed left ankle pain, recommended a bone scan and electrodiagnostic studies and prescribed Tramadol and Lyrica. Claimant was allowed to continue working where she would sit and stand as tolerated and elevate the foot as needed. He also wanted to look at the MRI ordered by claimant's primary care physician. Dr. Zarr opined that if claimant's pain was not significantly improved after 3-4 weeks, he would consider referring claimant back to Dr. Eubanks for further lumbar sympathetic blocks.

Claimant had a bone scan on March 8, 2012, which revealed no evidence of RSD of the left foot or ankle.

Claimant had a follow-up visit with Dr. Zarr on March 23, 2012. Dr. Zarr noted the bone scan was negative for RSD and the electrodiagnostic studies showed compression of the left peroneal nerve at the ankle. Dr. Zarr referred claimant to Dr. Eubanks for further lumbar sympathetic blocks. He also sent Dr. Patel, an orthopedic foot specialist, claimant's electrodiagnostic study results asking his opinion on whether claimant should have a surgical release of the peroneal nerve at the left ankle.

Claimant last met with Dr. Zarr on April 27, 2012, for follow-up of her left foot and ankle pain. At this time, he had yet to receive a response from Dr. Patel, so claimant was referred to Dr. Shah to determine if surgery was needed and, if not, claimant would be at maximum medical improvement and released to regular duty. Claimant was released to regular work so long as she was allowed to sit and stand as tolerated and elevate her left foot as needed. Claimant was discharged from Dr. Zarr's care.

Dr. Zarr testified he did not have a firm opinion on whether claimant had a diagnosis of RSD and said he would need to see claimant again to confirm that diagnosis. He testified that, based on his last evaluation of claimant, he would assign a 4 percent

permanent partial impairment to the left lower extremity at the level of the ankle. He utilized the 4th edition of the AMA *Guides* in determining this impairment. Dr. Zarr did not provide this impairment rating in any medical report and claimant's counsel objected to its admissibility.

At the request of her attorney, claimant met with Daniel Zimmerman, M.D., for an examination of her left ankle injury, on November 21, 2014. Claimant reported continued stiffness and tightness affecting the left ankle. She was limited in her ability to walk on gravel or grass, which restricted her responsibilities on playground duty. She also indicated she can no longer wear high heels because of the pain and discomfort in her left foot and ankle. Claimant reported pain and discomfort affecting the left foot and ankle and the right lower extremity after the development of what she was told was RSD. Claimant reported being unable to walk quickly because of left ankle discomfort, but was able to climb steps comfortably. Claimant also had tingling affecting the lateral side of her left ankle which radiated upward toward her knee.

Dr. Zimmerman noted that claimant also indicated that since developing the symptoms affecting the left lower extremity, she has had a lack of energy. She indicated that it is difficult to be on her feet for extended periods of time, she has not been able to water ski, ice skate, walk for exercise, bike for exercise, run or jog and her sleep quality has been poor.

Dr. Zimmerman opined that the prevailing factor for the left foot and ankle RSD was the trauma that occurred on August 18, 2010. Utilizing the 4th edition of the AMA *Guides*, Table 11A and 12 A, pages 3/48 and 3/49, Dr. Zimmerman assigned a 50 percent permanent partial impairment to the left lower extremity at the ankle for residuals of complex regional pain syndrome. He concluded claimant's condition was stable and no further diagnostic or therapeutic intervention was warranted. Therefore, she was at maximum medical improvement. Dr. Zimmerman noted that, although claimant was at maximum medical improvement, it is more probably true than not that additional medical treatment provided or prescribed by a licensed physician would be necessary in the future.

Dr. Zimmerman recommended a therapeutic dosing schedule of a proprietary nonsteroidal anti-inflammatory medication, injections in the left lower extremity and the use of ice packs for the left lower extremity.

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.[1]

[1] K.S.A. 2010 Supp. 44-501 and K.S.A. 2010 Supp. 44-508(g).

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[2]

K.S.A. 44-510e(a) (Furse 2000) states in part:

> Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.[3]

Claimant suffered a work-related injury to her left ankle on August 18, 2010. The record supports the finding by the ALJ that claimant developed RSD, also known as complex regional pain syndrome (CRPS), as the result of that injury to her left ankle. The ALJ rejected the impairment rating of Dr. Zarr, finding his RSD rating, given when the doctor was not working from an RSD diagnosis was not credible. The Board agrees.

However, both Dr. Shah and Dr. Zimmerman diagnosed RSD and provided ratings from the AMA *Guides*. Dr. Shah identified the table from which his rating was derived. Dr. Zimmerman also identified the table from which his rating was derived, but the ALJ rejected Dr. Zimmerman's opinion as being incomplete. Dr. Zimmerman identified Table 11 in reaching a 50 percent functional rating opinion. However, the doctor appears to have limited his calculation to only a portion of the appropriate Table. The second calculation, required by Table 11 does not appear to have been completed. The ALJ correctly noted the use of the second calculation in Table 11 reduced the functional rating from 50 percent to 2.5 percent, identical to that of Dr. Shah.

The Board finds the determination by the ALJ that claimant suffered a 2.5 percent functional impairment to her left lower extremity to be supported by this record and affirms same. Claimant's contention that the ALJ misused the AMA *Guides* in reaching this calculation is rejected by the Board.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed. Claimant suffered a 2.5 percent functional impairment to her left lower extremity as the result of the accident on August 18, 2010.

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[2] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

[3] K.S.A. 44-510e(a) (Furse 2000).

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated July 7, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2016.

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BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

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Kenneth J. Hursh, Administrative Law Judge